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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay	)	
Telephone Reclassification	)	CC Docket No. 96-128
and Compensation Provisions	)	
of the Telecommunications	)	DOCKET FILE COPY ORIGINAL
Act of 1996	)	

REPLY COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom"), by its undersigned counsel, hereby responds to initial comments submitted by other parties concerning the Public Notice ("Notice"), DA 97-1673, issued on August 5, 1997, in the above-referenced proceeding.

I. INTRODUCTION

Despite the views expressed in the Public Notice that the D.C. Circuit's remand decision affected only a narrow portion of the FCC's payphone compensation rules, a careful review of the Court's decision indicates otherwise. Consequently, this remand proceeding should not be seen merely as an excuse to assemble additional arguments in an attempt to bolster discredited conclusions that the D.C. Circuit held "epitomize[] arbitrary and capricious decisionmaking." Whether the Court vacated the foundation of the Payphone Compensation Order or instead remanded it for further consideration in light of the Court's decision, the Commission should use this one opportunity to take a step back and reevaluate the roots of its unlawful payphone decision. In particular, given the extensive scope of the D.C. Circuit's decision, the Commission should reevaluate the necessity for an interim per-phone compensation plan, and the underlying basis for establishing a per-call compensation rate. Without such a searching and thorough reappraisal, there is considerable risk that the Commission's remand decision also will be found to be unlawful by the D.C. Circuit.

II. THE COMMISSION CANNOT JUSTIFY A "MARKET-BASED" RATE FOR COMPENSABLE PAYPHONE CALLS WITHOUT AN ACTUAL MARKET, AND WITHOUT CONSIDERING THE PROPER INCREMENTAL COST FACTORS

In its initial comments, WorldCom demonstrated that the Commission should adopt a single, nationwide rate for access code and subscriber "800" calls. This rate should be based on the incremental costs to the payphone service provider of supplying access to the payphone for such coinless calls.[1]

The ILECs and PSPs argue that a cost-based approach should not be employed to determine compensation rates. The ILECs claim that the "artificial, accounting-based" and "abstract and inherently arbitrary measures of costs" will only lead to "highly uncertain, expensive, and hotly contested cost-calculation proceedings."[2] APCC in turn decries the "highly subjective nature of cost allocations."[3] Instead, the ILECs and PSPs ask the Commission to adopt what they call a "market-based" approach by urging one of a number of "surrogates" or "defaults" that they claim approximate the rates that a free and competitive payphone market would support. These surrogates include "0+" commission rates, "0-" transfer rates, sent-paid toll call surcharges, and rates based on "inverse elasticity."[4]

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[1] WorldCom Comments at 2-4.

[2] RBOC Coalition Comments at 27, 12, 14.

[3] APCC Comments at iii.

[4] RBOC Coalition Comments at 31; APCC Comments at 7-9.

The Commission should reject the transparent arguments by the ILECs and PSPs for a "market-based" compensation rate. The supposedly market-derived surrogates advanced by the ILECs and PSPs are certainly more "artificial" and "arbitrary" than basing rates on an objective and verifiable analysis of incremental costs. The more fundamental problem, however, which is never even addressed by either set of parties, is that **THERE IS NO FREE, COMPETITIVE MARKET FOR COMPENSATING PAYPHONE PROVIDERS FOR ACCESS CODE AND SUBSCRIBER 800 CALLS**. As APCC admits candidly in its comments, "market forces do not operate freely" in the dial-around payphone environment.[5] Indeed, while lauding the near-miraculous virtues of competition in the free markets for payphone services, the ILECs and PSPs conveniently leave out the only participant in the payphone market that actually makes it a market: the consumer. Musty arguments about "inverse elasticity pricing" that completely ignore the paying consumer have absolutely no merit, and should be dealt with accordingly.

When the Payphone Compensation Order ultimately declined to adopt the so-called "caller pays" system, under which the consumer at the payphone would pay directly for making dial-around calls, the Commission essentially severed the necessary link between the consumer's payment of a rate and the establishment of the rate itself. By turning its back on the ultimate market-based solution -- letting consumers decide whether or not to put coins in the payphone to place a call -- the Commission was left with the untenable option of trying to cobble together a "market-based" cost proxy that denies the existence of the marketplace consumer in the first

[5] APCC Comments at 2.

place. In short, the Commission attempted -- and, according to the D.C. Circuit, failed -- to justify a market-based scheme, minus the market.

While purporting to speak on behalf of the consumers, the ILECs and PSPs render them invisible in their varying "analyses." Surely the range of "market-based" compensation rates suggested by the ILECs and PSPs -- between at least 42 and 63 cents per call -- would never be proposed, or accepted, if the consumer was the one paying the bill directly, rather than indirectly through the IXCs, as the ILECs and PSPs would have it. While urging only the ultimate "market-based" approaches, and roundly decrying any need for regulatory intervention, it is the ILECs and PSPs themselves who are hiding behind the federal government's regulatory processes to reap all that they can from captive and uninformed consumers.

The Telecommunications Act requires that PSPs are "fairly compensated for each and every completed intrastate and interstate call using their payphone...."[6] WorldCom believes that the statutory concept of fair compensation does not include gouging the consumer from a safe distance. Short of adopting the "caller pays" approach, the Commission should reject the "market-based" rhetoric of the ILECs and PSPs, and instead adopt a single, nationwide compensation rate that approximates the actual incremental costs of allowing consumers to make access code and subscriber "800" calls. AT&T, MCI, Sprint, and other parties provide excellent "bottoms up" analyses of the actual incremental costs of coinless payphone calls, with reasonable and fully-compensatory rates ranging from 5.7 cents per call (Sprint), to 8.3 cents per call (MCI), to 11 cents per call (AT&T).[7] The Commission should adopt one of these cost methods,

[6] 47 U.S.C. Section 276(1)(A).

[7] AT&T Comments at 10-13; MCI Comments at 3; Sprint Comments at 11.

or a blended approach using several methods, to establish its cost-based, and hence fair, compensation rate.

The RBOC Coalition also uses its "market-based" cost calculations as an opportunity to attempt to reallocate the financial burden of the Commission's requirement that the ILECs provide PSPs with payphone coding digits that identify compensable calls. The RBOCs claim that this requirement -- which they attribute incorrectly to "demands" and "commands" by AT&T and MCI -- will be "tremendously expensive" and will add from 5 to 11 cents to the cost of every compensable payphone call.[8] USTA also alludes to the "severe financial impact" to smaller ILECs of complying with the Commission's mandate, and seeks to allow the ILECs to both "fully recover" their costs of implementation and receive additional time to comply.[9]

The Commission should deny the ILECs their desire to recover those supposed costs in payphone compensation rates. Provision of payphone coding digits is not a cost of providing access to "dial around" calling from payphones, but is merely an expense of administering the Commission's payphone compensation scheme so that per-call tracking is possible. This financial burden was not placed on the IXCs because IXCs are not in a position to control the costs of provisioning. No reason exists for the Commission now to shift the financial burden at the eleventh hour.

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[8] RBOC Coalition Comments at 17-18. WorldCom would point out that it should be added to the list of supposedly unreasonable entities such as AT&T and MCI that "demand" that the ILECs live up to their regulatory obligations.

[9] USTA Comments at 3-4.

Moreover, aside from the likely inflated monetary figures provided by the ILECs, the simple fact remains that the Commission required the ILECs to provide payphone coding digits to PSPs. WorldCom recently filed an ex parte letter on this subject, and will not repeat those arguments here.[10] However, it must be noted here that the ILECs' own arguments were never presented to the Commission in a timely petition for reconsideration of either the Payphone Compensation Order or Payphone Compensation Reconsideration Order, and were never presented to the D.C. Circuit in a timely petition for review. In short, the apparent admission by some ILECs that they will be unable to abide by a Commission mandate is no excuse for what amounts to an extremely tardy petition for reconsideration of that mandate. The Commission should deny the ILECs' requests to evade their regulatory requirements.

III. THE COMMISSION MUST EITHER ABANDON OR RADICALLY ALTER ITS FLAWED PER-PHONE INTERIM COMPENSATION PLAN

WorldCom showed in its initial comments that the Commission's per-payphone interim plan has been rendered moot by the D.C. Circuit's decision, and that in its remand proceeding the Commission now should devote its resources to adopting a per-call compensation plan that will be sustainable in a court of appeals.[11] Should the Commission decide to revisit its interim per-phone compensation plan, however, WorldCom recommended that the Commission undertake extensive revisions to its per-phone compensation scheme by (1) setting an imputed rate based on incremental cost; (2) establishing the proper universe of payors,

[10] Ex parte letter from Douglas F. Brent and Richard S. Whitt, WorldCom, to William F. [redacted]

including smaller IXCs and the ILECs; and (3) establishing a rational nexus between the chosen means of apportioning payor compensation obligations (such as total toll revenues) and the obligation itself. Without such fundamental changes, the Commission will have neglected to correct those very aspects of its interim plan which drew the D.C. Circuit's condemnation.

The ILECs and APCC claim that the Commission should make only minor adjustments to its interim per-phone plan and apply changes retroactively. APCC's retroactivity claim takes a bizarre spin, however. APCC argues that the Commission should not reduce the PSPs' interim compensation amounts retroactively, but if it does, the lower rate should apply as well to the entire period of time between 1992 and 1996. Conversely, APCC argues that the Commission should apply any increased compensation rates retroactively.[12] The purported rationale for this convoluted "heads, we win, tails, you lose" approach is that, because Congress and the FCC had not seen fit to require additional compensation for the PSPs in previous years, equity demands that the PSPs avoid any shortfall, and garner any windfall, that might come their way.[13]

As CompTel correctly demonstrates, however, the D.C. Circuit's decision vacated key aspects of the Commission's payphone compensation scheme, including the default per-call rate and the interim compensation plan.[14] As a result, no compensation obligation is due at this time, and the FCC is without authority on remand to adopt a rule reimposing compensation for

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[12] APCC Comments at 16-27.

[13] <u>See</u> APCC Comments at 25-27.

[14] CompTel Comments at 4-8.

the period during which it failed to adopt valid rules.[15] Within this context, WorldCom urges the Commission to reject APCC's rewrite of legislative and regulatory history, and its painfully self-serving claims for as much compensation as regulatory fiat can embrace.

Finally, the ILECs admit that there is "no principled reason" why they should not be included in the pool of payors of per-phone compensation.[16] While this view has not constrained the RBOCs from arguing the opposite position in the recent past,[17] WorldCom welcomes the ILECs' admission here. Should the Commission decide (incorrectly) to revisit its interim per-phone compensation scheme, there is no justifiable reason why the ILECs should not be required to make payments for the compensable traffic they carry.

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[15] CompTel Comments at 8-10.

[16] RBOC Coalition Comments at 34.

[17] See Payphone Compensation Reconsideration Order at para. 121 (The RBOCs and Ameritech separately argue that, for "administrative" and other reasons, the RBOCs should not be included as interim compensation payors).

IV. CONCLUSION

For the foregoing reasons, WorldCom urges the Commission to: (1) set a fair compensation rate based upon TSLRIC costs, (2) apply that rate prospectively to all carriers capable of handling compensable calls, and (3) ensure that the permanent per-call rate is set prior to the effective date for per-call tracking.

Respectfully submitted,

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September 9, 1997

CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 9th day of September, 1997, sent a copy of the foregoing "Reply Comments of WorldCom, Inc." by hand delivery or first class postage-paid mail to each individual on the attached service list.

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